



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Matter of Chief Petty Officer Manolo D. Gullaba, USN (Retired)

File: B-244513

Date: December 10, 1991

DECISION

This action is in response to a request for reconsideration by Manolo D. Gullaba of our Claims Group's April 19, 1991 settlement in which his request for waiver was denied in part and allowed in part. We find no basis upon which to allow waiver of the remainder of the debt and affirm the Claims Group's action.

Chief Petty Officer Gullaba was retired on November 21, 1988. At that time, he was overpaid \$67.61 due to a miscalculation of his final pay. This portion of his debt was waived since he had no knowledge or reason to suspect that a miscalculation had been made. However, on December 1, 1988, he was paid his regular active duty pay, due to a failure of the pay center to discontinue his pay. He states that since the December payment was directly deposited into his account, he was unaware of the overpayment until he was notified by the Navy. Our Claims Group held that since the choice to have one's pay automatically sent to one's bank is a matter of personal choice, it does not relieve that individual from the responsibility of verifying bank statements and questioning discrepancies or overpayments. Thus, the member should reasonably have known of the overpayment and should have questioned the payment of the entire amount of his regular active duty pay after he had been retired.

The applicable statute, found at 10 U.S.C. § 2774 provides the Comptroller General with authority to waive claims for erroneous payments of pay on behalf of members or former members if collection of the claim would be against equity and good conscience and not in the best interests of the United States. Generally these criteria are met by a finding that the claim arose from an administrative error with no indication of fraud, fault, misrepresentation or lack of good faith on the part of the member or any other person having an interest in obtaining the waiver.

[Handwritten notes and signatures]

ESP

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The word "fault" as used in section 2774 has been interpreted by this Office as including more than a proven overt act or omission by the member. Thus, fault is considered to exist if in light of all the facts it is determined that the member should have known that an error existed and taken action to have it corrected. Thus, if a member knew or should have known he was being overpaid, we have found that the member was not without "fault" in the matter and waiver is denied.

In the present case, we agree with the Claims Group's determination that Chief Petty Officer Gullaba should reasonably have known that he was being overpaid and should have questioned the overpayment. Timothy R. Snelling, B-243882, October 11, 1991. Since he is not without "fault" in this matter, we are unable to find a basis for waiver of the debt of \$1,159.81. While repayment of the debt may be a hardship to the member, this does not provide a basis upon which we may allow waiver.

JF *Seymour Epos*
James F. Hinchman
General Counsel